

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 759 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RASILABEN KESHARBHAI PARMAR

Versus

INDUBEN HEJABHAI SOLANKI

Appearance:

MR AH DESAI for Petitioner
MR PJ KANABAR for Respondent No. 1
MR MUKESH PATEL for Respondent No.2,3
MR JR NANAVATI for Respondent No. 4
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/11/98

ORAL JUDGMENT

#. Heard the learned counsel for the parties.

#. The respondent No.5-Jaysinh Samatbhai Parmar Arts and Commerce College, Kodinar, had advertised for recruitment

one post of Lecturer in Sociology. The defendant-petitioner and plaintiff-respondent No.1 and many others had applied for the said post in response to the aforesaid advertisement of the college. The defendant-petitioner has been selected for the post by selection committee and his name has been placed at No.1 in the merit list. The proceedings of the selection committee of the selection made for the post of lecturer in Sociology were sent to Saurashtra University for its approval. The plaintiff-respondent No.1 filed a suit on 23rd September 1992 challenging the selection proceedings of the selection committee for making selection on the post of Lecturer in Sociology. The defendant-petitioner was not joined as a party at the initial stage in the suit by the plaintiff-respondent No.1. The plaintiff-respondent No.1 filed an application ex.5 for grant of ad-interim relief against respondent No.3 not to approve the name of defendant-petitioner for the post of Lecturer in Sociology. After hearing the learned counsel for the parties and recording the finding that the plaintiff-respondent No.1 has no prima-facie case and balance of convenience also does not favour grant of temporary injunction, the learned trial Court, under its order dated 16th September 1993, dismissed the application ex.5 with costs and vacated ex parte ad-interim relief granted against the University.

#. Feeling aggrieved of the said order, the plaintiff-respondent No.1 filed Civil Misc. Appeal No.107/93 in the Court of District Judge, Amreli, on 14th October 1993, which was finally came to be decided by Assistant Judge on 18th March 1995 and till final disposal of the suit, temporary injunction has been granted that the defendant-petitioner should not be given appointment on the post of Lecturer in Sociology. Hence this civil revision application before this Court by the petitioner.

#. On 16.2.98, this Court has been pleased to grant interim relief in terms of para-9B which reads as under:

Except Mr.M.V.Patel, learned AGP appearing for respondent No.2 State of Gujarat, none appears for contesting party. In view of this, interim relief in terms of para 9(B) is granted. The petitioner will be allowed to join on the post of Lecturer in Sociology. If the respondents are interested in contesting the matter, it will be open for them to approach this Court for final hearing of the case. Direct service is permitted.

#. Para-9(B) of the civil revision application reads as under:

Pending the admission, hearing and final disposal of this civil revision application, this Hon'ble Court may be pleased to issue ad-interim injunction suspending the operation and implementation of the order passed by the Assistant Judge, Amreli in Civil Misc. Appeal No.103/93 dated 18.3.1994.

#. It is not in dispute that in pursuance of the interim relief which has been granted by this Court on 16..98, the defendant-petitioner has already joined the post of Lecturer in Sociology in the college.

#. It is not in dispute that open selection has been made for the post of Lecturer in Sociology in which the plaintiff-respondent No.1 has also participated and had taken her chance for selection on the said post. It is a different matter that she could not stand to merits in comparison to defendant-petitioner. As usual, on being not selected a candidate came up with manifold grievances against selection committee. Manifold defects have also been alleged to be found and above that manifold other aspersions, allegations and blames are being put on the members of selection committee. However, the plaintiff-respondent No.1 filed a civil suit challenging the selection proceedings and it will ultimately be decided by the Court. At this stage, there are only allegations regarding illegalities, irregularities, etc. alleged to have been committed by selection committee. It is difficult to say whether ultimately she will succeed in the suit or not. The Court should not be oblivious of the fact in such matters that ordinarily interference should not have been made with the selection proceedings, more so, when the selection committee consisted of expert persons in the subject concerned. Challenge to the selections made on the post and more so, teaching post, by the selection committee consisting of experts in the civil court is available on a very very limited grounds. Only where the case of malafides has been established or where some defect in constitution of selection committee which goes to the root of the matter is made out, then and then only there may be a case where the Court may interfere with the selection. The matter has to be considered from another aspect. Where a candidate has taken a chance for his /her selection and when he/she failed to stand in comparison to the merits, he/she challenged that selection, in that eventuality the matter has to be considered with great caution and care.

#. Even if it is taken or accepted that the plaintiff-respondent No.1 has made out a *prima-facie* case, still a larger question does arise whether in a case of the category of present case a temporary injunction could have been granted by the Courts to restrain the college or University from giving appointment to a candidate who has been placed at sr.no.1 in the merit list prepared by selection committee. Before I go on merits of the case, I consider it to be appropriate to refer legal position as emerging from series of decisions of the Apex Court in the matter of grant of temporary injunction or interim reliefs pending final decision of suit or the writ petitions before this Court. Time and again, rule of caution has been given by the Apex Court that interim relief should not be granted in a case where it amounts to grant of final relief at the interlocutory stage. Reference in this respect may have to the decision in the case of State of U.P. v. Vishveshwar, reported in 1995 (Supp.) III SCC 590. In the case of Bharat Bhushan Soneji v. Abdul K. Mohammad, reported in 1995 (Supp.) II SCC 593, the Apex Court held that interim relief granted pending writ petition having effect of allowing the writ petition itself is not proper. In the case of Commissioner/Secretary of the Government, H & M Education Department v. Ashokkumar K. Kohli, reported in 1995 (Supp.) IV SCC 214, the Apex Court said that interim relief should not amount to overreach relief which ultimately may or may not be granted in the writ petition. Reference may have to another decision of the Apex Court in the case of P.R.Sinha v. Inder Krishna Ram reported in 1996(1) SCC 681 where the Ape Court observed that High Court should not pass interim order of the nature of which is to grant a relief which can be granted only at the final disposal of such writ petition.

#. From the decisions of the Apex Court which I briefly referred above, legal position is clearly laid down that in the case of grant of interim relief pending final decision of matter, the Courts should have been very careful and should take note of the fact that interim relief may not result in grant of final relief which has to be granted only after full fledged trial of the suit and when the Court is satisfied that the plaintiff has proved his case. Grant of temporary injunction more so, in the matter of appointments to different services, i.e. in government services or in services of private colleges or other educational institutions or Corporations, District Panchayats, etc., the Courts have to be very cautious and considerate pending decision of the matter

finally. Grant of temporary injunction of the nature where a selected candidate has been restrained from joining the post is very very serious thing. If he has been restrained from joining the post, the Court should not lose sight of the important aspect that by this interim relief, the plaintiff will not get any immediate benefit. Converse to it, the defendant and to be more precise, a selected candidate will be deprived of appointment and consequential monetary benefits. When the plaintiff has come up with some grievances in the Court and it is too difficult to predict, accept and say whether ultimately he will succeed in the suit or not, it is a very onerous and hard order to restrain a selected candidate from joining the post. In case ultimately the plaintiff succeeds in the suit and the selection of the candidate is found to be illegal the Court is within its competence to grant all reliefs for which he has been found entitled in accordance with law and if the matter is looked from this aspect, certainly declining of the relief in such matter will not cause any injury to the plaintiff which cannot be compensated in terms of money. But in other case, i.e. where ultimately the plaintiff fails in the suit, the selected candidate cannot be put to original position and he cannot be given all benefits. In the matters of grant of temporary injunction, I am constrained to observe that the Courts below normally have one sided approach. They are only concerned many a times to see as if the loss or injury is likely to be caused to the plaintiff and the same is only to be seen and protected. That approach is not in consonance with the well settled principles of grant of temporary injunction under Order 39, Rule 1 of the CPC or Section 151 of the CPC etc. While dealing with the matters of grant of temporary injunction pending the suit, the Courts are equally concerned to see the corresponding loss or injury likely to be caused to the defendant in case ultimately the plaintiff fails in the suit. We can have illustration of the case in hand itself. One thing is very clear, by grant of temporary injunction the Court could not have ordered for giving appointment to the plaintiff. So the plaintiff will not get appointment and an opportunity to work on the post. However, if ultimately he succeeds then the Courts may grant relief to him for which he is found legally entitled. But by restraining the defendant-petitioner from joining the post, as stated earlier, he will be deprived of appointment as well as consequential monetary benefits and even if ultimately plaintiff fails in the suit, I have my own reservations whether he can be compensated in terms of money. Further, he cannot be compensated for experience which he would have gained by working on the

post of Lecturer in Sociology. It is not gain say that by acquiring experience on the post of lecturer, a lecturer gets the eligibility for promotion or for further selection on the higher post. This is also equally very substantial injury and loss to be suffered by a candidate who has been selected for the post of lecturer but the Court has granted relief restraining him from joining the post. In such matters, by any stretch of imagination, it is difficult to accept that declining of temporary injunction will cause any irreparably injury to the plaintiff which cannot be compensated in terms of money. Similarly, the balance of convenience also does not in favour the grant of temporary injunction in this case.

##. Leaving apart the plaintiff, defendant, and restraining of selected candidate from joining the post of Lecturer, it will have many more serious repercussions. In an institution, i.e. a teaching institution, one teacher will not be available in the subject concerned and for want of teacher, teaching work of the school will suffer and as a consequence thereof, the students will be put to suffer loss of education. The Courts should not have been conservative in the approach while considering the grant of temporary injunction and they have to consider overall effect of injunction i.e. whether it will affect also to the undisclosed persons or not. The matter should have also been considered with reference to the interest of institution and the students. It is not out of the context to refer here the decision of this Court in the case of High Court of Gujarat v. V.J.Patel reported in 1997(2) GLR 1660 where the Division Bench of this Court (Coram: Mr.Justice J.N.Bhatt & Mr.Justice S.M.Soni) has laid down principles which are to be adhered to by the Courts below while considering the applications for grant of temporary injunction under Order 39, Rule 1 and 2, Civil Procedure Code, 1908.

##. If this matter is considered from any angle or aspect the grant of temporary injunction by the learned first appellate Court is wholly arbitrary, unjustified and perverse. It is a case where the learned first appellate Court has clearly committed material irregularity in exercise of its jurisdiction and as such, the impugned order cannot be allowed to stand. If the order impugned in this civil revision application is allowed to stand, it will certainly occasion failure of justice and cause injury to the defendant-petitioner.

##. In the result, this civil revision application

succeeds and the same is allowed. The order of the Assistant Judge, Amreli, in Civil Misc. Appeal No.103/93 dated 18.3.1994 is quashed and set aside. The Ex.5 filed by plaintiff-respondent No.1 for grant of temporary injunction is dismissed. The respondent No.1 is directed to pay Rs.1,000/= as costs of this civil revision application to the defendant-petitioner. Rule made absolute in aforesaid terms.

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(sunil)